

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Appl. No. : 10/730,990
Applicant : Cooper, Richard Charles Gordon
Filed : 12/10/2003
TC/A.U. : 3769
Examiner : SORIANO, BOBBY GILES
Docket No. : 63-5
Customer. No. : 000053594
Date : October 15, 2009

Commissioner for Patents
P.O. Box 1450
Alexandria VA 22313-1450

RESPONSE

Sir:

We are writing in response to the Office Action of February 3, 2010, to which a response is due on May 3, 2010.

Applicant has considered Examiner's remarks and the art cited in the Examiner's response. Applicant respectfully traverses the Examiner's position that the instant application is obvious over Fruge in view of Lennox et al. With respect, the claims of the instant application are directed to a method of using a device for assessing psychological state of an individual, which is clearly set forth in the preamble and the body of claim 13. In the Examiner's office action it is stated that "Fruge teaches a mountable apparatus (Figures 1, 3a, and 4) for assessing a psychological state arising from relationships"; however, it is respectfully submitted that what Fruge disclosed is a "behavior tracking board for tracking and monitoring the behavior of one or more individuals over a predetermined period of time" (See, for example, column 5, lines 21-23 of Fruge) and an apparatus "particularly well adapted for use by parents to encourage proper behavior by their children" (column 5, lines 25-26). Applicant respectfully submits that Fruge does not teach an apparatus for assessing the psychological state of an individual based on that

individual “experiencing an actual psychological event or actual experience arising from relationships” (claim 13, part (b)). The value assessment in Fruge is based not on the individual’s self assessed psychological state but rather the behavior of an individual as assessed by a third party, e.g. the parent. (See, for example, column 8, lines 8-13). In the cited reference with regards to this value assessment, there is no explicit reference or even any suggestion that the assessed individual’s state of mind such as the psychological state of an individual is considered. This is not surprising given that in Fruge, the individual is not self assessing and consequently it would be difficult to incorporate the individual’s psychological state into the apparatus in Fruge. In fact, Fruge teaches that in one embodiment, “the board is preferably removably secured to some object at a height and location which cannot be physically reached by the individuals named on the board...” (column 6, line 58-60.) In contrast, the instant application, when read as a whole, clearly teaches a method wherein an individual can directly operate the apparatus in response to his/her experiences and psychological events and determine a value associated with said experiences and events. In the last amendment, claim 13 was amended to clearly include the “psychological state” assessment. With respect, it is submitted that Fruge fails to teach a mountable apparatus for assessing a “psychological state”.

Furthermore, it appears that the Examiner has taken the position that Fruge disclosed a “scale” *without* identifying the specific reference character. Therefore, Applicant can only assume, based on his review of Fruge, that it is reference character 22, the “behavior status positions”, that was considered by the Examiner as the “scale”. In the last amendment, claim 13 was amended to clearly include “indicia of psychological state on said scale” in the preamble. With respect, it is submitted that there is no explicit reference or even any suggestion that the behavior status positions are indicia of an individual’s state of mind such as the psychological state of an individual as the scale defined in claim 13. With respect, it is submitted that Fruge fails to teach or disclose a “scale defining a range of values, indicia of psychological state on said scale”.

Therefore, the difference between Fruge and the instant application is more than the Examiner asserted. Lennox et al. do not cure the above-discussed deficiencies of Fruge. Furthermore, Examiner states that “it would have been obvious to one of ordinary skill in the art...to modify the instructions of Fruge in view of written instruction so of Lennox et al., since Lennox et al states doing so creates pre-defined ground rules.” It is respectfully submitted that the manual as disclosed in the pending claims are not ground rules as would be understood in Lennox or Fruge. In Claim 13, step (e), it is clearly stated that when the individual experiences an event, the individual then refers to a manual. The manual of the present invention is therefore used primarily to determine a value but without directly intending to provide a score to promote a specific behavior. In contrast, the manual of Lennox et al. are clearly formulated to encourage “a mutually satisfying relationship based on both partners contributing in an equitable manner according to pre-defined ground rules.” Therefore, the manual of Lennox et al. provide point values as associated with behavior rather than experience and does not cure the above discussed deficiencies of Fruge.

The Applicant respectfully submits that the Office Action of February 3, 2010 cannot be made FINAL when an objection based on new art, namely Fruge in light of Lennox, has been introduced under Section 103(a) while the previous office action of April 15, 2009 had an objection based on the reference Shamos introduced under Section 102(b). As was stated in our previous office action response of October 15, 2009, the claims of the instant application were amended with the office action response of October 15, 2009 only for greater clarity without altering the substance of the invention claimed. It is respectfully submitted that the objection based on new art were not necessitated by the amendments but applies equally to the claims as amended by the Office Action response of October 14, 2008.

In addition, although the Applicant had requested an address change, this Office Action was sent to the wrong address where we, the Agent for the Applicant, have not carried on business since January 31, 2006 and mail is no longer being forwarded from this address. This Action was found on a PAIR review by our office just on or about the 2nd extension of time due date and therefore we have been forced to take all three extensions because of the error in mailing.

Please also note that the current NEW Examiner, Mr. Bobby Soriano, is on vacation this week and I was unable to speak with him. It was necessary to contact the old Examiner, Mr. Michael Astorino, to get the correct phone number for the Examiner's supervisor Mr. Henry Johnson as page 4 of the Office Action incorrectly gives the phone number of a different SPE.

When I was finally able to reach Mr. Johnson, in a telephone conference with him on August 2, 2010, I was advised that the USPTO did receive our mail returned as undeliverable and that he has a record of the address correction request. As such, he indicated that there appears to be sufficient basis on the record for this current Office Action to be withdrawn and reissued.

An office action response is presently being filed with a Request for Continued Examination (RCE) in order to preserve the application and prevent it from being abandoned. In light of the above arguments, we formally request that a NON-FINAL Office action be reissued with a new due date and that the applicant be allowed to continue prosecution without filing a Request for Continued Examination. Applicant will proceed to petition for a refund of the Extension of Time Fees filed with this response once the office action has been re-issued.

Together with this response, the Applicant Petitions for the requisite Extension of Time and Authorizes that the requisite extension of time fee to be taken from Deposit Account 502171 for a 3 month extension of time and Applicant claims small entity status. Aside from the Extension of time fees provided for on the attached Form PTO/SB/22 (07-09) (approved for use through 01/31/2012) entitled Petition for Extension of Time under 37 CFR 1.136(a), it is believed that no other fees are due at this time. Any deficiencies in payment of fees may be charged to deposit account No. 502171.

Respectfully submitted,

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Attachment: Form PTO SB22 – Petition for Extension of Time and authorization for extension of time fee to be taken from Deposit Account 502171 for 3 months extension claiming small entity status in the amount of USD\$555.